

REMARKS/ARGUMENTS

I. General Remarks.

Applicants respectfully request reconsideration of the application in view of the remarks contained herein.

II. Disposition of the Claims.

At the time of the Office Action, claims 1-42 were pending. Claims 39-42 are rejected. Claims 1-38 are allowed. Applicants gratefully acknowledge Examiner's designation of claims 1-38 as allowable subject matter.

III. Remarks Regarding the Rejection of Claims 39-42 Under 35 U.S.C. § 102(b).

A. Rejections Over *Padgett*

Claims 39-42 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,570,743 issued to Padgett et al. (hereinafter “*Padgett*”). With respect to this rejection, the Office Action alleges that *Padgett* discloses:

a method that includes a method of preparing a cement composition comprising the steps of: mixing a first cementitious component (fly ash and/or dry cement) and an aqueous-based fluid (water) to form an intermediate cement composition in a first mixer 2; and mixing the intermediate cement composition and a second cementitious component (fly ash and/or dry cement) in a second mixer 4 to form the cement composition.

(Office Action at 2.) Applicants respectfully disagree because *Padgett* does not teach or suggest each and every limitation of claims 39-42 as required to anticipate the claims under 35 U.S.C. § 102(b). MPEP § 2131.

In particular, independent claim 39 is not anticipated by *Padgett* because *Padgett* does not disclose “mixing a first cementitious component and an aqueous-based fluid to form an intermediate cement composition in *a first mixer*; and mixing the intermediate cement

composition and a second cementitious component *in a second mixer* to form the cement composition.” Rather than disclosing this recitation, *Padgett* provides that:

the present invention is defined as the improvement comprising providing for at least three continuous, properly proportioned flow streams directly into the mixing unit including: flowing the first essential material directly into the mixing unit; flowing an at least partially unpremixed stream directly into the mixing unit, wherein the at least partially unpremixed stream includes at least one, and only one, of the second and third essential materials; and flowing the other of the second and third essential materials directly into the mixing unit.

Padgett, col. 4, ll. 15-24. *Padgett* further provides that:

[t]he substances to be flowed into mixing unit 1 (specifically *through mixer 2 and into the tub 4* in the FIG. 1 embodiment) include both the previously defined “essential materials” and the previously defined “additives.” That is, the process of the present invention can be implemented by flowing all the ingredients of a slurry recipe directly into the mixing unit 1; however, the present invention is most broadly defined as comprising flowing at least three separate streams of different essential materials directly into the mixing unit 1 at the oil or gas well, wherein each of the essential materials is required to obtain a predetermined defining characteristic of the slurry.

Padgett, col. 6, ll. 30-41, emphasis added. Contrary to the remarks made in the Office Action, *Padgett* does not teach “mixing the intermediate cement composition and a second cementitious component *in a second mixer* to form the cement composition,” as recited in claim 39. The streams “are mixed in the axial flow mixer 2. Continued mixing of these streams occurs in a known manner in the tub 4.” *Padgett*, col. 8, ll. 17-19. Accordingly, *Padgett* does not disclose mixing a *first cementitious component* and an aqueous-based fluid to form an intermediate cement composition *in a first mixer*; and mixing the intermediate cement composition and a *second cementitious component in a second mixer* to form the cement composition, as recited in independent claim 39.

Therefore, Applicants respectfully assert that independent claim 39 is not anticipated by *Padgett*. Accordingly, for at least these reasons, Applicants respectfully request removal of the 35 U.S.C. § 102(b) rejection as to independent claim 39, and correspondingly, as to dependent claims 40-42.

B. Rejections Over *Allen*

Claims 39-41 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,103,908 issued to Allen et al. (hereinafter “*Allen*”). With respect to this rejection, the Office Action alleges that *Allen* discloses:

a method that includes a method of preparing a cement composition comprising the steps of: mixing a first cementitious component and an aqueous-based fluid (water) to form an intermediate cement composition in a first mixer 2; and mixing the intermediate cement composition and a second cementitious component in a second mixer 4 to form the cement composition.

(Office Action at 2-3.) Applicants respectfully disagree because *Allen* does not teach or suggest each and every limitation of claims 39-41 as required to anticipate the claims under 35 U.S.C. § 102(b). MPEP § 2131.

In particular, independent claim 39 is not anticipated by *Allen* because *Allen* does not disclose “mixing a first cementitious component and an aqueous-based fluid to form an intermediate cement composition in *a first mixer*; and mixing the intermediate cement composition and a second cementitious component *in a second mixer* to form the cement composition.” Rather than disclosing this recitation, *Allen* provides that:

[t]he mixtures which are produced in the tubs 16, 20, 22 result from the initial mixtures which are produced and input by the inlet means 6. In the illustrated preferred embodiment, the inlet means 6 includes flow mixing means 26 for receiving and mixing a first substance and a second substance and for outputting a mixture which includes the first and second substances. In the preferred embodiment the flow mixing means 26 includes a cement inlet 28 for receiving dry cement, a water inlet 30 for receiving water, and

a mixture output 32 for outputting a cement slurry of received cement and water into the primary mixing tub 16. This is particularly implemented in the preferred embodiment by an axial flow mixer connected to the tub 16 . . .

The cement inlet 28 of the flow mixer 26 is connected to means for selectively admitting the dry cement into the flow mixer 26. This includes a bulk cement metering device 38, such as a valve of a type known in the art (for example, a conventional bulk control cement head valve). The metering device 38 is shown connected to a bulk surge tank 40 into which dry cement is loaded in a conventional manner. A valve 39 can be included for a purpose described hereinbelow.

The water inlet 30 of the flow mixer 26 is connected to a source of water such as is provided through a conventional pump 42 and a conventional valve 44.

As the flow mixer 26 receives cement and water and initially mixes it and provides it through its output 32 into the tub 16, the tub 16 fills to its capacity. Further input to the tub 16 from the flow mixer 26 causes an overflow from the tub 16. This overflow is communicated over one or more weirs into either or both of the tubs 20, 22.

Allen, col. 7, l. 29- col. 8, l. 4. Thus, contrary to the remarks made in the Office Action, *Allen* does not teach “mixing the intermediate cement composition and *a second cementitious component in a second mixer* to form the cement composition,” as recited in claim 39. The second mixer is an overflow tub, and a second cementitious component is not added at either of the overflow tubs to form the cement composition. Accordingly, *Allen* does not disclose mixing a *first cementitious component* and an aqueous-based fluid to form an intermediate cement composition *in a first mixer*; and mixing the intermediate cement composition and a *second cementitious component in a second mixer* to form the cement composition, as recited in independent claim 39.

Therefore, Applicants respectfully assert that independent claim 39 is not anticipated by *Allen*. Accordingly, for at least these reasons, Applicants respectfully request

removal of the 35 U.S.C. § 102(b) rejection as to independent claim 39, and correspondingly, as to dependent claims 40-41.

IV. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinction discussed by Applicants is sufficient to overcome the anticipation rejections.

SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any additional fees be charged to Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 063718.0538.

Respectfully submitted,

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